

**BEFORE THE FEDERAL ELECTION COMMISSION**

|                          |   |                        |
|--------------------------|---|------------------------|
| In the Matter of         | ) |                        |
|                          | ) |                        |
| MUR 5990                 | ) | CASE CLOSURE UNDER THE |
| CITIZENS FOR MATT SHANER | ) | ENFORCEMENT PRIORITY   |
|                          | ) | SYSTEM                 |
|                          | ) |                        |
|                          | ) |                        |

**GENERAL COUNSEL'S REPORT**

Under the Enforcement Priority System, matters that are low-rated \_\_\_\_\_

\_\_\_\_\_ are forwarded to the Commission with a recommendation for dismissal. The Commission has determined that pursuing low-rated matters compared to other higher rated matters on the Enforcement docket warrants the exercise of its prosecutorial discretion to dismiss these cases.

The Office of General Counsel scored MUR 5990 as a low-rated matter. In this matter, the Complainant, S. Charles Picardi, alleges that the Citizens for Matt Shaner Committee (the "Committee") and Peter Hill, as treasurer, violated the sale and use prohibitions under 2 U.S.C. § 438(a)(4) and 11 C.F.R. § 104.15. The Committee allegedly gathered information about individual donors that was disclosed in reports filed with the Commission, and then used that information to solicit contributions or for other commercial purposes. Specifically, the complainant alleges that on March 8, 2008, he received a fundraising solicitation letter at his home from the Committee. The complainant asserts that since he is not a registered voter and had no prior knowledge of Matt Shaner or his campaign committee, which is located more than 200 miles from the complainant's home, the Committee must have acquired his name from public disclosure

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reports filed by Congressman John Peterson and Friends of John Peterson, to whom the complainant had given his first and only political campaign contribution on May 7, 2007.

In its response, the Committee states that the complaint should be dismissed, because the conduct alleged does not constitute the "commercial" use prohibited by the Act and its regulations, and because any violation that may have occurred was inadvertent and *de minimis*. The Committee contends that on March 7, 2008, it sent solicitation letters to 1,093 individuals, 109 of whom had previously contributed money to Shaner and whose names were collected from the Committee's in-house database of previous donors. The Committee acknowledges, however, that the remaining 984 letters were sent to people who had contributed \$500 or more to Congressman John Peterson's campaign. The addresses of these individuals were obtained by the Committee using phone books and other internet resources. The Committee also states that the cost of the mailings totaled \$2,012, of which \$1,811 was attributable to the portion of the mailers related to Congressman Peterson's donors. The Committee noted that it received no responses or contributions in connection with the mailings.

Based upon the information presented in this matter, it appears that the Committee retrieved and used contributor information from the Commission's public disclosure database for purposes of soliciting campaign contributions. Thus, this Office recommends that the Committee be cautioned that such use of contributor information could have violated the sale and use prohibitions under 2 U.S.C. § 438(a)(4) and 11 C.F.R. § 104.15. Finally, in light of the *de minimis* cost of the mailings at issue and the fact that no funds were received as a result of the solicitations, and in furtherance of the Commission's priorities and resources, relative to other matters pending on the

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Enforcement docket, the Office of General Counsel believes that the Commission should exercise its prosecutorial discretion and dismiss the matter. *See Heckler v. Chaney*, 470 U.S. 821 (1985).

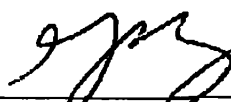
**RECOMMENDATION**

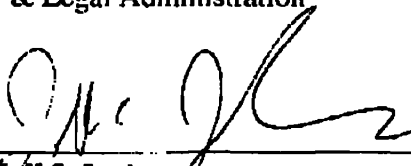
The Office of General Counsel recommends that the Commission dismiss MUR 5990, send a cautionary notification to Citizens for Matt Shaner Committee and Peter Hill, in his official capacity as treasurer, close the file, and send the appropriate letters.

2/13/09  
Date

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General Counsel

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